

November 30, 2009

BY HAND-DELIVERY

Clerk of the Board
Civilian Board of Contract Appeals
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Washington, D.C. 20036

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2009 NOV 30 P 4: 05

CIVILIAN BOARD OF
CONTRACT APPEALS



FEMA

BS

DOCKET NUMBER: CBCA-1781-FEMA

Dear Sir or Madam:

Please find attached the Response of the Federal Emergency Management Agency (FEMA) to the arbitration request submitted by the University of Southern Mississippi and filed as CBCA-1781-FEMA.

Please add the following Office of Chief Counsel contacts for all notices and correspondence to FEMA related to the arbitration hearing: Linda M. Davis, Associate Chief Counsel – Program Law Division, 202-646-3327 or lindam.davis@dhs.gov; and Kim A. Hazel, Senior Counsel – Program Law Division, 202-646-4501 or kim.hazel@dhs.gov.

Very truly yours,

Amy Weinhouse
Senior Attorney
Office of Chief Counsel
DHS/Federal Emergency Management Agency
500 C St., S.W.
Washington, D.C. 20472

Cc: Lee P. Gore, Esq.
G. Truett Roberts, Esq.
University Counsel
The University of Southern Mississippi

Mike Womack
Director
Mississippi Emergency Management Agency

Major P. May
Regional Administrator
Federal Emergency Management Agency Region IV

**The University of Southern Mississippi
Request for Arbitration for Full Replacement Costs for the Administration
Building at Gulf Park Campus
Project Worksheet 9230
FEMA-1604-DR-MS
Docket # CBCA 1781-FEMA**

**RESPONSE OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY TO
ARBITRATION REQUEST FROM
THE UNIVERSITY OF SOUTHERN MISSISSIPPI
HATTIESBURG, MS**

The Federal Emergency Management Agency ("FEMA") hereby respectfully submits its Response to the Request for Arbitration of Project Worksheet 9230 made by the University of Southern Mississippi ("the University").

On November 2, 2009, FEMA received the request of the University for arbitration of FEMA's decision to deny public assistance funding for the replacement of the University's Administration Building. The University estimates the cost of replacement of the Administration Building to be \$2,547,200.

Federal regulations grant FEMA the discretionary authority to provide public assistance for the replacement of damaged facilities. See 44 C.F.R. § 206.226 (f). Applicants are eligible for assistance for facility replacement costs if estimated repair costs exceed 50 percent of the cost of replacing a facility to its pre-disaster condition. Id.

The University contends that FEMA departed from its guidance in the preparation of PW 9230 for damage to the University's Administration Building. Specifically, FEMA did not use the same cost estimating tool when calculating both repair and replacement cost estimates for this building. FEMA's Disaster Specific Guidance 19 directed that, if FEMA estimators used RS Means 2006 to calculate repair costs, those estimators "must" also use RS Means 2006 to calculate eligible building replacement costs. FEMA erred in this calculation by using RS Means to calculate repair costs but a 2005 Annual Capital Facilities Study provided by the University to generate replacement values for this building.

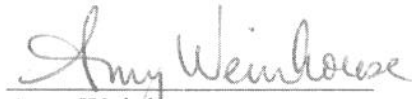
FEMA has reassessed the repair vs. replacement calculation using RS Means CostWorks 2006 for the University's Administration building and determined that the building is eligible for full replacement costs. PW 9230 assessed eligible repair costs to be \$953,413 and, using RS Means CostWorks 2006, replacement costs to be \$1,622,985. (\$953,413/\$1,622,985 = 58.7 percent).

FEMA concurs that the Administration Building is eligible for replacement costs. FEMA will prepare a version to Project Worksheet 9230 and obligate the amount of \$2,547,200 for the building replacement. FEMA will reconcile this estimate and pay actual incurred

costs for the completion of the eligible scope of work at final inspection and closeout of this project.

FEMA, therefore, respectfully requests that this panel dismiss the University's request as moot.

Respectfully submitted on this 30th day of November 2009 by

A handwritten signature in cursive script, reading "Amy Weinhouse".

Amy Weinhouse
Senior Attorney
Office of Chief Counsel
Federal Emergency Management Agency

Cc: Lee P. Gore, Esq.
G. Truett Roberts, Esq.
University Counsel
The University of Southern Mississippi

Mike Womack
Director
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